

GREGORIO ZAGALA, PETITIONER AND APPELLANT, VS. EUSTACIO S. ILUSTRE, IN HIS CAPACITY AS CLERK OF THE COURT OF FIRST INSTANCE OF BATANGAS, RESPONDENT AND APPELLEE.

G.R. No. 23999, November 21, 1925

Ponente: VILLA-REAL J.

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VILLA-REAL J.:

Gregorio Zagala was prosecuted for, and convicted of, a violation of Act No. 1780 and light threats, and sentenced to pay fines in the sums of P5 and P6 in criminal cases Nos. 4777 and 4890 respectively of the Court of First Instance of Batangas.

After the entry of the judgments in said cases Mr. Cipriano B. Sarmiento, attorney, appeared in the office of the clerk of the Court of First Instance of Batangas, and manifested his desire to pay said fines, but without tendering the money. The clerk informed him that he should pay the costs before the fines, according to an opinion of the Attorney-General and a circular of the Insular Auditor, and that any amount he might remit would be applied first upon the payment of the costs and then upon the fines. As no payment was made either of the fines or of the costs, the clerk placed the case in the hands of the sheriff. In view of this difference of opinion between the attorney for the defendant and the clerk, the former took up the matter with the judge and the latter suggested the remedy of habeas corpus to determine the question.

As suggested, the accused, Gregorio Zagala, filed the proper petition in which he prayed that after the proper proceedings, the clerk of the Court of First Instance of Batangas, be ordered immediately to release the accused and receive the fines.

For answer to the petition, the respondent denied that the accused had ever offered to pay the fines and that he had ever rejected payment thereof. He also denied having detained the defendant or in any manner deprived him of his liberty.

After hearing, the trial court rendered judgment, denying the petition and dismissing the proceeding.

A mere reading of the record is sufficient to show the impropriety of the remedy of habeas corpus now applied for, not only as to the person against whom the proceeding is directed, but also as to the cause for instituting the same.

The clerk of the Court of First Instance of Batangas, as a ministerial officer who acts in accordance with the mandate of the law, has no authority to detain any accused for any reason whatsoever, and consequently he cannot deprive the accused of his liberty, and should he do so against the latter's will, he would be criminally liable.

Furthermore the evidence shows that there was no actual and effective detention or deprivation of liberty of the defendant by the respondent. In order that the special remedy of habeas corpus may be invoked, it is necessary that there should exist a true restraint or deprivation of liberty. A nominal or moral restraint is not sufficient. (29 C. J., sec. 13.)

It is used only to determine the question of jurisdiction and test the legal authority of the warden to have the petitioner under his custody. (Op. cit. sec. 19.)

For the foregoing, the judgment appealed from, dismissing the special remedy, is affirmed, without special pronouncement as to costs. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.
Johnson, J., did not take part.

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